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Supreme Court, U.S.
FILED
SEP 14 2009
OFFICE OF THE CLERK

No. 09-194

IN THE

Supreme Court of the United States

FRANCOISE ANATE GOMIS,

Petitioner,

v.

ERIC H. HOLDER, JR.,
United States Attorney General,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Corrected BRIEF OF HUMAN RIGHTS FIRST, THE CENTER FOR GENDER AND REFUGEE STUDIES & THE HARVARD IMMIGRATION AND REFUGEE CLINICAL PROGRAM ET AL., AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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September 14, 2009

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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U. N. Protocol Relating to the Status of
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BRIEF AMICUS CURIAE

INTEREST OF THE AMICI[1]

Amici are human rights organizations, legal services organizations, mental health service providers, immigration clinical programs, and law school professors, all of whom advocate for or work with refugees or are experts in asylum law and policy in their professional capacities. *See* App., *infra*. *Amici* are filing this brief in support of the petitioner to bring to the Court's attention the impact the one-year asylum filing deadline can have on *bona fide* asylum applicants.

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The parties have consented to the filing of this brief.

INTRODUCTION

The United States has a strong tradition of welcoming the persecuted. In the wake of World War II, this country played a leading role in building an international refugee protection regime to ensure that the world's nations would never again refuse to extend shelter to refugees fleeing persecution and harm. It has committed to the central guarantees of the 1951 Refugee Convention and its 1967 Protocol, and passed the Refugee Act of 1980 in order to bring domestic laws into compliance with the Refugee Convention and Protocol by incorporating the Convention's definition of a "refugee" and the protections that flow from this status.[2]

At stake in this case is the continued availability of asylum to a significant number of refugees who are erroneously being subjected to the recently-enacted one-year bar when they should qualify for an exception. Unless this Court overturns the decision

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[2] *See I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 432-41 (1987) (recounting legislative history). Under United States law, a "refugee" is, in relevant part, a person who is outside his or her country of nationality or habitual residence and "is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42). The statutory definition was adapted from the 1951 United Nations Convention Relating to the Status of Refugees, to which the United States became a party in 1968 by signing the 1967 Protocol. 1951 United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150; 1967 United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

below, Francoise Anate Gomis will be returned to a country where she is acknowledged to be in danger of being subjected to female genital mutilation (FGM); she will be returned because an Immigration Judge decided that she could not be excused for filing out of time even though she presented new facts that heightened the risk that she would be mutilated (and therefore significantly strengthened her eligibility for asylum).

Amici will not repeat Petitioner's central argument that 8 U.S.C. § 1252(a)(2)(D) confers jurisdiction to review agency applications of the one-year asylum deadline to undisputed facts. Instead, *amici* explain from their own experience why judicial review of one-year deadline determinations is necessary—to ensure that refugees are not improperly denied asylum or deported back to countries where they face political, religious and other forms of persecution. When Congress enacted the one-year asylum deadline in 1996, it did so because it perceived that some non-refugees placed in removal proceedings were abusing the system by applying for asylum as a delaying tactic. To preserve asylum for the many *bona fide* refugees with good reason for failing to apply within a year of entry, Congress provided two broad exceptions to the deadline: one for extraordinary circumstances and one for changed circumstances.

Congress intended these two exceptions to be applied broadly so as to protect legitimate refugees. Unfortunately, in the years since the deadline was enacted, a number of Immigration Judges (IJs) and Board of Immigration Appeals (BIA) members have drastically narrowed the exceptions, with disastrous consequences for refugees. As the one-year deadline

is now being applied, refugees such as Ms. Gomis are routinely being returned to countries where they are in danger of persecution. Others, if they happen to meet the significantly heightened standard for withholding of removal, are being afforded only the limited right not to be returned to the country where they would face persecution; they are not protected from removal to other countries or allowed to become permanent residents, and most importantly they can never reunite with their families by bringing them to safety in the United States.[3] Without judicial review, these refugees have no hope of obtaining the protection of the asylum law as written.

Amici hope that their description of the actual situation at the agency level—and the contrast between this current situation and Congress's original intent—will provide further impetus for this Court to consider Ms. Gomis's jurisdictional arguments.

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[3] *Compare* 8 U.S.C. § 1159(b) (affording asylees the opportunity to apply for permanent resident status) *and* 8 C.F.R. § 1208.21 (providing derivative benefits for the spouse and children under 21 of asylees), *with* 8 U.S.C. § 1231(b)(3) (offering sole protection for withholding grantees: the right not to be returned to a country where that person's "life or freedom would be threatened" on account of a protected ground).

ARGUMENT

I. THE CONGRESS THAT ENACTED THE ONE-YEAR DEADLINE FOR FILING ASYLUM APPLICATIONS BUILT EXCEPTIONS INTO THE DEADLINE BECAUSE CONGRESS UNDERSTOOD THAT MANY BONA FIDE REFUGEES FACE SPECIAL CIRCUMSTANCES PREVENTING THEM FROM APPLYING WITHIN A YEAR OF ENTERING THE UNITED STATES.

Congress enacted the one-year deadline in 1996 because it perceived that some migrants without genuine and viable claims to protection were abusing the asylum process by applying defensively as a means of delaying their removal.[4]

As Congress considered how to deter baseless claims, however, it also recognized that there are a number of reasons why some *bona fide* refugees might be prevented from applying for asylum immediately after entering the country. Members made clear that they did not want to shut these

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[4] *See* 142 Cong. Rec. S4468 (daily ed. May 1, 1996) (Former Senator Alan K. Simpson (R-WY), one of the sponsors of the deadline, explaining "We are not after the person from Iraq, or the Kurd, or those people. We are after the people gimmicking the system"). *See also* Philip G. Schrag, *A Well Founded Fear: The Congressional Battle to Save Political Asylum in America* 47-48 (2000) (describing origins of deadline). The former Immigration and Naturalization Services also launched a set of major reforms to eliminate a substantial backlog that had allowed many asylum cases to languish for years. *See* Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization, 59 Fed. Reg. 62,284 (Dec. 5, 1994).

refugees out from the relief of asylum.[5] To prevent such an injustice, Congress devised two broad exceptions to the deadline: for extraordinary circumstances and for changed circumstances.

A. Many refugees are prevented from filing for asylum within a year of entering the United States.

For a number of reasons, many *bona fide* refugees find themselves unable to apply for asylum immediately after entering the United States. To apply for asylum, a refugee who has suffered must be able psychologically to relive past trauma—by describing and discussing it over and over again, in writing and in person, with a representative, with potential witnesses or other sources of corroboration, and with an asylum officer and/or judge. She may have to find someone to help her present her facts, often a lawyer. She also must learn about the law and rules, procedural and substantive. She must be able to fill out a complex, 10-page English-language application form. She has to track down colleagues, co-workers or other contacts in her home country, as well as supporting documents, to satisfy a demanding standard of corroboration. She must translate all her evidence into English. She needs to juggle all this work involved in the asylum process with finding a home, coping with physical and/or psychological wounds, finding means of support (usually without permission to work), caring for her family, and

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[5] *See* 142 Cong. Rec. S4468 (statement of Sen. Simpson).

learning the language and customs of a new country.[6] And she must judge whether the danger she faces is sufficient to support an asylum claim (a particular challenge where the situation at home is volatile).

In light of these demands, it understandably takes some length of time, sometimes more than a year, for *bona fide* refugees to file their application. Those who have been subjected to past persecution and/or torture often bear severe psychological wounds that diminish their ability to face their past or plan for the future; they may only be able to do so with the distance of time and/or with long-term improvements from mental health treatment.[7] Those who were subjected to sexual abuse or other forms of degradation in their home countries may be struggling to overcome their shame and/or difficulty describing such incidents, whether personal, social or cultural.[8] Refugees from countries in which the government monitors the mails and wires may delay gathering corroboration from relatives in their

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[6] *See* Michele R. Pistone & Philip G. Schrag, *The New Asylum Rule: Improved But Still Unfair*, 16 Geo. Immigr. L.J. 1, 8-9 (2001); *see also* Lawyers Committee for Human Rights (now Human Rights First), *Refugee Women at Risk* 15-16 (2002), *available at* http://www.humanrightsfirst.org/refugees/reports/refugee_women.pdf (detailing some of the particular challenges faced by women refugees as a result of the asylum filing deadline).

[7] *See* Stuart L. Lustig, *Symptoms Of Trauma Among Political Asylum Applicants: Don't Be Fooled*, 31 Hastings Int'l & Comp. L. Rev. 725, 729 (2008) (explaining that, among PTSD patients, "[j]ust recounting the story is enough to trigger uncontrollable tears, panic attacks, or flashbacks of the event").

[8] *See* Karen Musalo & Marcelle Rice, *Center for Gender & Refugee Studies: The Implementation of the One-Year Bar to Asylum*, 31 Hastings Int'l & Comp. L. Rev. 693, 716-17 (2008).

country of origin out of the reasonable fear that such contacts could place their relatives in danger of persecution. Others may be overwhelmed with providing food and shelter for their families or caring for sick family members (or coping with their own sicknesses or injuries). Still others hope that the situation at home will improve while they temporarily reside in the United States, only to find that the situation persists or even worsens over an extended period of time. And some may run afoul of the deadline while trying to obtain legal assistance or documentary corroboration.[9]

A refugee has little or no control over these kinds of situations. Moreover, these circumstances do not in any way undermine the substantive validity of an individual's asylum claim. To the contrary, some of them are *the direct effects* of past persecution and therefore affect those most deserving of protection under the U.S. Refugee Act. It is not surprising, then, that in the years before the one-year deadline was enacted, fewer than half of the *successful* asylum applicants represented by *pro bono* attorneys working with Human Rights First (then the Lawyers Committee for Human Rights) had applied within their first year in the United States.[10]

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[9] *See id.*, at 715-16; Leena Khandwala et al., *The One-Year Bar: Denying Protection to Bona Fide Refugees, Contrary to Congressional Intent and Violative of International Law*, Immigration Briefings, Aug. 2005, at 4; Michele R. Pistone, *Asylum Filing Deadlines: Unfair and Unnecessary*, 10 Geo. Immigr. L.J. 95, 100-101 (1996).

[10] *See* Pistone & Schrag, *supra* note 5, at 9.

B. Recognizing this reality, Congress designed two exceptions—for extraordinary circumstances and for changed circumstances—that were intended to be broad and to ensure continued access to asylum.

Congress recognized the reality described above. As Senator Edward Kennedy (D-MA) explained in his speech supporting the amendment to extend a proposed 30-day deadline to one year,

> The bottom line is that the cases where there appears to be the greatest validity of the persecution claims—the ones involving individuals whose lives would be endangered by a forced return to their particular countries—are often the most reluctant to come forward. They are individuals who have been, in the most instances, severely persecuted. They have been brutalized by their own governments. They have an inherent reluctance to come forward and to review their own stories before authority figures. Many of them are so traumatized by the kinds of persecution and torture that they have undergone, they are psychologically unprepared to be able to do it. It takes a great deal of time for them to develop any kind of confidence in any kind of legal or judicial system, after what they have been through, and to muster the courage to come forward.[11]

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[11] 142 Cong. Rec. S3282 (daily ed. Apr. 15, 1996) (statement of Sen. Kennedy).

For similar reasons, Senator Orrin Hatch (R-UT), who strongly advocated the one-year deadline, nonetheless acknowledged that "adequate protections" were necessary[12] and stressed that he was "committed to ensuring that those with legitimate claims of asylum are not returned to persecution, particularly for technical deficiencies."[13]

To reduce the risk that the one-year bar would lead to the denial of asylum to refugees, Congress included two independent exceptions: 1) "changed circumstances which materially affect the applicant's eligibility for asylum"; and 2) "extraordinary circumstances relating to the delay in filing an application within the [prescribed] period."[14] Two Senators instrumental in the passage of the one-year deadline, Senators Hatch (who was one of the conferees) and former Senator Spencer Abraham (R-MI), engaged in a colloquy in which they repeatedly described these exceptions as "important" and endorsed a broad construction of them:

> Mr. ABRAHAM.
>
> Would you say that the intent in the changed circumstances exception is to cover a broad range of circumstances that may have changed and that affect the applicant's ability to obtain asylum?
>
> Mr. HATCH.

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[12] 142 Cong. Rec. S11491 (daily ed. Sept. 27, 1996) (statement of Sen. Hatch).

[13] 142 Cong. Rec. S11840 (daily ed. Sept. 30, 1996) (pre-vote colloquy between Sen. Abraham and Sen. Hatch).

[14] 8 U.S.C. § 1158(a)(2)(D).

> Yes. That exception is intended to deal with circumstances that changed after the applicant entered the United States and that are relevant to the applicant's eligibility for asylum. The changed circumstances provision will deal with situations like those in which the situation in the alien's home country may have changed, the applicant obtains more information about likely retribution he or she might face if the applicant returned home, and other situations that we in Congress may not be able to anticipate at this time. [15]

As to the extraordinary circumstances exception, Senator Hatch explained:

> [T]he extraordinary circumstances exception applies to reasons that are, quite literally, out of the ordinary and that explain the alien's inability to meet the 1-year deadline. Extraordinary circumstances excusing the delay could include, for instance, physical or mental disability, unsuccessful efforts to seek asylum that failed due to technical defects or errors for which the alien was not responsible, and other extenuating circumstances.[16]

Shortly after the one-year deadline was enacted, the then-Immigration and Naturalization

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[15] 142 Cong. Rec. S11839-40 (daily ed. Sept. 30, 1996) (pre-vote colloquy between Sen. Abraham and Sen. Hatch).

[16] *Id.*

Services (INS) [17] promulgated implementing regulations. According to the regulations, "changed circumstances" "may include, but are not limited to . . . [c]hanges in conditions in the applicant's country of nationality," as well as "[c]hanges in the applicant's circumstances that materially affect the applicant's eligibility for asylum, including changes in applicable U.S. law and activities the applicant becomes involved in outside the country of feared persecution that place the applicant at risk." "Extraordinary circumstances" "may include but are not limited to . . . [s]erious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival," "[i]neffective assistance of counsel," and the rejection of a timely application for technical defects.[18]

The "changed circumstances" and "extraordinary circumstances" exceptions to the one-year deadline, as drafted by Congress and implemented by the INS, were the lynchpins to balance enforcement objectives with fairness. They were intended to allow the government to deter baseless applications while protecting genuine refugees in situations that justified their failure to file within a year of arrival. Unfortunately, agency practice has upset this balance, favoring enforcement with little consideration of fairness.

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[17] Pursuant to the Homeland Security Act of 2002, the former INS was abolished and its functions transferred to several different agencies within the Department of Homeland Security. Pub. L. No. 107-296, § 471, 116 Stat. 2135 (2002).

[18] 8 C.F.R. § 208.4(a)(4), (a)(5).

II. IN PRACTICE, MANY AGENCY ADJUDICATORS HAVE NARROWED THE STATUTORY EXCEPTIONS TO SUCH A DEGREE THAT THEY DO NOT ADEQUATELY PROTECT REFUGEES

Despite the clear evidence that Congress intended for the deadline exceptions to be applied broadly and the expansive language of the agency regulations, many IJs and BIA members have applied the exceptions so narrowly that they no longer protect the refugees Congress intended to safeguard.

Since the deadline was enacted, tens of thousands of applications have been rejected as untimely.[19] Thus a statutory measure originally meant to discourage fraud at the margins has come to be applied in such a way that it is now one of the principal grounds on which asylum is denied. Many *amici*, as practitioners, have encountered legal errors in how IJs, and the BIA in its cursory review, apply the statutory exceptions. The following sections will discuss several of these in turn.

A. Overly narrow construction of "changed circumstances"

The first type of error concerns the "changed circumstances" exception, and the degree or type of change that it requires. Contrary to the statute, the legislative history and the regulations, adjudicators have excluded applicants such as Ms. Gomis from

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[19] *See* Musalo & Rice, *supra* note 7, at 698-99. (citing statistics from the asylum office). EOIR does not provide statistics concerning application of the one-year deadline.

this exception solely because the new evidence they presented went to a fear they already had when they had entered the United States. In Ms. Gomis' case, the IJ reasoned that the fact that Ms. Gomis' sister had recently been subjected to FGM could not constitute "changed circumstances" because it "simply confirms the preexistent risk of persecution she claims she had when she arrived here in the United States." [20] The BIA, by single-member affirmance, summarized the IJ as having found no "changed circumstances" because the risk of FGM was "the entire reason the respondent claims to have left Senegal in 2001."[21] In other words, in the IJ's view, because Ms. Gomis fled Senegal out of fear of FGM, *no* new evidence indicating a heightened danger of FGM, no matter how compelling, could possibly be a changed circumstance material to her eligibility for asylum.

Similarly, in the case of *Viracacha v. Mukasey*,[22] the IJ had held that an applicant who feared persecution by the Revolutionary Armed Forces of Columbia (FARC) could not establish changed circumstances justifying late filing because the changes he cited—i.e., the breakdown of the peace process between the FARC and the Columbian government and the resumption of civil war—had not "changed the circumstances in such a way as to cause a new situation to exist, one that hadn't existed during the period in which the respondent was

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[20] Pet. App. 44a.

[21] Pet. App. 30a.

[22] 518 F.3d 511 (7th Cir. 2008), *cert. denied*, 129 S.Ct. 451 (2008).

obligated to file."[23] In the IJ's mind, there was simply no material difference between a potential claim during a period of uneasy peace and an actual claim brought during an active civil war. The Court of Appeals for the Seventh Circuit found that it lacked jurisdiction to review such an error.[24]

In *Fakhry v. Mukasey*,[25] in which the IJ again denied asylum based on the same reasoning, the Court of Appeals for the Ninth Circuit held that such analysis was incorrect. Specifically, the court explained that the IJ's focus on the applicant's original motivation for fleeing his country overlooked that asylum eligibility is based on two elements: subjective fear and an objective basis for that fear. Because worsened conditions can increase the applicant's subjective fear as well as augment the objective basis for that fear, they fit the statutory standard of "materially affect[ing] the applicant's eligibility for asylum."[26] The court added that the IJ's rule would have the perverse effect of penalizing individuals who, not wanting to file a frivolous asylum application, waited to file until conditions in their country clearly supported an application.[27]

Yet another reason why the IJs' logic fails in these cases is that the regulations themselves extend the "changed circumstances" exception to changes in United States *law* "that materially affect the

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[23] Petition for Writ of Certiorari, *Viracacha*, 129 S.Ct. 451 (No. 07-1363), *available at* 2008 WL 1906208 (quoting the IJ decision).

[24] *Viracacha*, 518 F.3d at 516.

[25] 524 F.3d 1057 (9th Cir. 2008).

[26] 8 U.S.C. § 1158(a)(2)(D); *Fakhry*, 524 F.3d at 1063.

[27] *Fakhry*, 524 F.3d at 1063-64.

applicant's eligibility for asylum," thereby making clear that the key issue is not whether the applicant has a new reason to fear persecution but rather whether the grounds of his *eligibility* have changed.[28] The restrictive IJ construction also contravenes legislative intent. In pre-vote floor remarks and colloquy, Senator Hatch assured his colleagues that the changed circumstances provision would "deal with," inter alia, situations "in which an alien's home government may have *stepped up* its persecution" or where an "applicant may have become aware through reports from home or the news media just *how* dangerous it would be for the alien to return home."[29] Senator Hatch's language squarely contradicts the view of "changed circumstances" as requiring the existence of a new and different basis for the asylum claim, or some wholly new *form* of danger.

Under the current circuit split on the jurisdictional question, applicants in the Ninth Circuit can seek relief from this serious and outcome-determinative (indeed, in many cases, life-and-death) error, while applicants elsewhere such as Ms. Gomis and Mr. Viracacha generally cannot. *Amici* are aware of many other cases in which refugees were denied relief based on the same error; for example, a Russian woman was granted withholding based on her homosexual orientation but barred from asylum for late filing even though she filed shortly after learning that her same-sex partner had been raped and beaten to the point of mental incapacitation,[30]

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[28] 8 C.F.R. § 208.4(a)(4)(i)(B).

[29] 142 Cong. Rec. S11491 (daily ed. Sept. 27, 1996) (statement of Sen. Hatch) (emphasis added).

[30] Musalo & Rice, *supra* note 7, at 701.

and a Kyrgyzstani applicant fearing religious persecution was barred from asylum even though he decided to apply shortly after receiving a visit from his mother and learning from her that anti-Semitism was worsening in Kyrgyzstan.[31]

As set forth above, it is evident from the legislative history that Congress never intended for IJs to be applying the bar in such a tortured way. What Congress intended was to allow refugees to file out-of-time if the conditions worsened in their country of origin or if their own situation changed in such a way as to put them at greater risk (and therefore more likely to be found eligible for asylum)—regardless of whether the "essential nature" of the risk was the same or new. Judicial oversight is necessary to restore this exception to its intended scope.

B. Improper Analysis of Post Traumatic Stress Disorder Cases

Many IJs also err in how they consider post-traumatic mental disorders under the "extraordinary circumstances" exception. The legislative history shows that delays due to mental disorders were foremost among the circumstances that Congress intended to cover through the "extraordinary

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[31] *Kanivets v. Riley*, 320 F. Supp. 2d 297 (E.D. Pa. 2004), *appeal dismissed as moot on other grounds sub nom. Kanivets v. Gonzales*, 424 F.3d 330 (3d Cir. 2005). The Third Circuit generally has held that courts lack jurisdiction to review one-year deadline determinations. *Sukwanputra v. Gonzales*, 434 F.3d 627, 635 (3d Cir. 2006).

circumstances" exception to the one-year deadline.[32] At the time the provision was enacted, the Immigration and Naturalization Services recognized this fact by drafting a regulatory provision requiring adjudicators to consider "mental disability," particularly "any effects of persecution or violent harm suffered in the past."[33] Nonetheless, many applicants are barred from asylum because their IJs conclude—against the consensus of the medical establishment—that anyone who was able to perform some basic functions during the first year of her presence in the United States could therefore have filed for asylum in a timely manner.

According to the American Medical Association and the American Psychiatric Association, individuals suffering from post-traumatic stress disorder (PTSD) habitually avoid "people, places, thoughts, or activities that bring back memories of the trauma."[34] A person suffering from PTSD, then, may be functional in everyday life yet unable to apply for asylum because applying would require her to engage in the very activity that triggers her panic responses: remembering the past trauma, discussing it repeatedly with their lawyer, testifying, trying to recover details with sufficient specificity to satisfy the adjudicator, going over these details again and again

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[32] *See* 142 Cong. Rec. S11491-02 (daily ed. Sept. 27, 1996) (statement of Sen. Hatch) (describing the exception as including "physical or mental disability").

[33] 8 C.F.R. § 208.4(a)(5)(i).

[34] Posttraumatic Stress Disorder Patient Page, 286 JAMA 630, 630 (2001). *See also* Diagnostic Manual, American Psychiatric Association, 309.81Posttraumatic Stress Disorder (2000); Lustig, *supra* note 7, at 731-32 (2008).

as others probe potential inconsistencies.[35] To get to a point where she can discuss the trauma without reliving it, she may need time and/or intensive treatment.

Unfortunately, *amici* have encountered numerous cases where the IJ declined to find exceptions to the one-year bar based on his or her own mistaken intuitions about post-traumatic behaviors rather than the expert testimony or medical literature. For example, a Guatemalan domestic violence victim presented evidence of PTSD suffered as a result of her abuse. However, because the applicant had maintained employment and paid her bills since her arrival in the United States, the IJ concluded that her PTSD could not have prevented her from meeting the filing deadline. The IJ denied asylum and granted relief under the Convention Against Torture and withholding of removal instead.[36] The paradox of such a ruling is that these latter forms of relief require a showing of a greater risk of harm than does asylum.

In another case, the IJ applied the deadline to a Kenyan applicant and barred her asylum application, despite a psychologist's evaluation diagnosing her with PTSD and Major Depressive Disorder (MDD), simply because the applicant had managed to join and regularly attend a church during her first year in the United States.[37] Some applicants have been subjected to the one-year bar because they continue

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[35] *See id.*

[36] Musalo & Rice, *supra* note 7, at 700.

[37] *Id.* at 704.

to suffer from the same disorder that earlier prevented them from filing.[38]

Two particularly egregious cases, described in *The Implementation of the One-Year Bar to Asylum*, bear recounting in detail:

> A Kenyan woman whose mother and grandmother helped her escape FGC [female genital cutting] as a child. She was subsequently forced to marry a man with three other wives. While raping her to punish her for failing to conceive, her husband discovered she had not undergone FGC. When her husband and tribal elders attempted to subject her to FGC, the applicant attempted suicide. She was unconscious and hospitalized for four months. When she recovered her husband beat and raped her again. . . . The applicant fled to the U.S. on a tourist visa and applied for asylum after the one-year deadline had passed. The IJ accepted her diagnosis of PTSD but rejected her contention that it was directly related to her delay in filing. The IJ reasoned that the applicant had exhibited "entrepreneurial skills" by caring for children to raise money while she was homeless and isolated, and because her pro se application was well written and articulate.
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> ...

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[38] *Id.*

> An Albanian teenager who was kidnapped by a trafficker, held captive, and raped and battered while plans were made to traffic her into prostitution. The adolescent escaped but could not return home for fear of being recaptured. She fled to the United States, entered as an unaccompanied minor, and applied for asylum 13 months after entering the country (and while still a minor). In immigration court, she presented the testimony of a clinical psychologist who diagnosed the applicant with PTSD and MDD. The clinical psychologist testified that the applicant's psychological conditions prevented her from speaking about the trauma she had been subjected to. Despite this expert testimony, the IJ concluded that the applicant could easily have rectified her feelings of shame by seeking out an attorney. The BIA dismissed the young woman's appeal.[39]

There is nothing in the statute or legislative history that suggests Congress intended for IJs, when deciding whether to excuse a late filing, to be parsing the degree of trauma experienced by individuals who suffered years of continuous rape, beating and imprisonment to the point where they attempted suicide and nearly succeeded, or by minors who suffered rape, imprisonment and beating.

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[39] Musalo & Rice, *supra* note 7, at 704-05.

C. Other errors

In addition to the two key errors listed above, *amici* routinely encounter and are aware of other unduly restrictive applications of the exceptions to the one-year deadline. For example, one IJ applied the bar to an applicant who argued that she had been consumed with caring for her terminally ill minor child while living in a shelter,[40] and another IJ applied the bar to an Afghani woman who bore two children out of wedlock while living in the United States and feared persecution on account of her new status as a single mother.[41]

Because a significant number of those denied asylum instead receive withholding, one result of these unduly restrictive applications of the law is a growing class of refugees who are living in the United States without any hope of ever assuming the rights and obligations of citizenship in their adopted country.[42] There is no evidence that, when it set out

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[40] *Id.* at 708.

[41] *Id.* at 709. The applicant was granted withholding of removal. *Id.*

[42] Musalo & Rice, *supra* note 7, at 721. Another source of this growth, and another development Congress could not have intended or even foreseen, is the DHS practice in some regions of pressuring refugees into "settlements" in which they withdraw their asylum claim in return for a promise of withholding of removal (or relief under the Convention Against Torture). *See id.* at 719-21 (providing examples). As a substantive legal matter, this practice makes no sense. An applicant who meets the stringent "more likely than not" test for withholding clearly would have qualified for asylum but for the one-year deadline problem and may well merit exemption from the deadline (e.g., based on PTSD). Moreover, because withholding grantees unlike asylees are not allowed to bring

to curtail asylum fraud and clear away backlogs while protecting *bona fide* refugees, Congress intended this effect.

III. JUDICIAL OVERSIGHT IS NECESSARY TO RESTORE THE STATUTORY EXCEPTIONS TO THEIR PROPER SCOPE

Without judicial review, the errors outlined above will continue, and the United States will continue to deny asylum to the very victims of persecution Congress intended to protect and deport some of them to back to the country where they face a threat of persecution.[43]

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their family over, the human consequences of these plea bargains are disastrous. Many asylum seekers fled in great haste, and traveled to the U.S. under hazardous conditions to which they would not have wanted to subject their minor children. These individuals are forced to choose between their fear of persecution and, on the other hand, their desire to reunite with the family left behind and to rescue them from danger.

[43] In addition, narrow construction of the one-year deadline runs contrary to U.S. commitments to protect refugees from *refoulement* under the Refugee Convention and Protocol, as well as customary international law. *See* UNHCR Executive Committee, Conclusion No. 15 (XXX), Refugees Without an Asylum Country (1979) at (i) (formally stating that "failure to [file within a certain time limit], or the non-fulfillment of other formal requirements, should not lead to an asylum request being excluded from consideration"); Pistone, *supra* note 8, at 103 (quoting Letter from UNHCR representative to Chair of the House Judiciary Committee, which expressed fear that the filing deadline and other provisions "will have a grave impact on the ability of the United States to offer protection to those fleeing from persecution."). The United States is a member of the Executive Committee of UNHCR.

In many other areas of asylum law, courts of appeals have played a critical role in ensuring that legitimate refugees are not deported back to the countries where they would face political, religious and other forms of persecution. Courts have also helped to ensure that asylum law develops uniformly and in a manner that comports with the statute and with Congressional intent.[44]

Courts have overturned insufficiently reasoned denials.[45] They have vacated and remanded adverse credibility findings based on speculation, unsupported assumptions, and flawed reasoning.[46] They have vacated and remanded where IJs failed to assess evidence of past harm cumulatively and taking into account the particular characteristics of the victim.[47] The have made sure that the BIA considers the evidence before it, properly construes the applicant's claims, and does not stray from its own precedent without explanation.[48] Indeed, it was judicial criticism of the overall quality of Immigration

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[44] *See, e.g., Negusie v. Holder* 129 S. Ct. 1159 (2009) (striking down agency holding that the "persecution" bar to asylum applies to individuals who assisted persecutors under duress); *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421 (1987) (striking down agency application of "more likely than not" standard to asylum applicant, and holding that the proper standard, "well-founded fear," required a significantly lower showing).

[45] *See Benslimane v. Gonzales*, 430 F.3d 828, 833 (7th Cir. 2005); *Li v. U.S. Atty. Gen.*, 488 F.3d 1371, 1375 (11th Cir. 2007).

[46] *See Cao He Lin v. U.S. Dept. of Justice*, 428 F.3d 391 (2d Cir. 2005).

[47] *See Poradisova v. Gonzales*, 420 F.3d 70 (2d Cir. 2005).

[48] *See Shardar v. Attorney General of U.S.*, 503 F.3d 308, 315-17 (3d Cir. 2007); *Gebreeyesus v. Gonzales*, 482 F.3d 952, 955 (7th Cir. 2007); *Li*, 488 F.3d at 1375-76.

Court adjudication as having "fallen below the minimum standards of legal justice" that recently led to widespread internal review and reform goals in 2006.[49]

The same concerns that Courts of Appeals have raised generally about the asylum system apply to agency applications of the one-year deadline, many of which are dispositive of the applicant's protection claim. Judicial review of one-year-deadline determinations is necessary to ensure that IJs correctly apply the law and that the United States continues to protect those who come to this country seeking refuge from persecution.

CONCLUSION

For the foregoing reasons, *amici* respectfully submit that the petition for the writ of certiorari should be granted.

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[49] *Benslimane*, 430 F.3d at 830. *See also* Adam Liptak, *Courts Criticize Judges' Handling Of Asylum Cases*, N.Y. Times, Dec. 26, 2005, at A1; Department of Justice, Measures to Improve the Immigration Courts and the Board of Immigration Appeals, *available at* http://trac.syr.edu/immigration/reports/194/include/Gonzales22ImprovementMeasures.pdf (last visited Sept. 10, 2009). The Transactional Records Access Clearinghouse at Syracuse University (TRAC) has studied these reform proposals and concluded earlier this year that implementation as yet "has failed to achieve many of its ambitious purposes." *See* Immigration Courts: Still A Troubled Institution, *available at* http://trac.syr.edu/immigration/reports/210/ (last visited Sept. 4, 2009).

Respectfully submitted,

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September 14, 2009

APPENDIX

LIST OF AMICI CURIAE

The **Advocates for Human Rights** is a non-governmental, non-profit organization dedicated to the promotion and protection of internationally recognized human rights. Founded in 1983, today The Advocates for Human Rights engages more than 800 active volunteers annually to document human rights abuses, advocate on behalf of individual victims of human rights violations, educate on human rights issues, and provide training and technical assistance to address and prevent human rights violations. The Advocates for Human Rights provides *pro bono* legal assistance to indigent asylum seekers in the Upper Midwest. The Advocates for Human Rights has a strong interest in seeing that the United States construe legal protections for refugees and asylum seekers in a way that is consistent with international human rights standards and that does not leave actual victims of persecution outside its reach.

Founded in 1994 by a small group of concerned professionals, **Advocates for Survivors of Torture and Trauma** (ASTT) provides comprehensive mental health care and social services to survivors of torture and war trauma. ASTT is an independent, nonprofit organization whose mission is to alleviate the suffering of those who have experienced the trauma of torture, to educate the local, national, and world community about the needs of torture survivors, and to advocate on their behalf. ASTT's mental health services include psychological assessment, individual and family psychotherapy, and group treatment. In

appropriate cases, psychologists will conduct a full psychological evaluation for use as expert asylum court testimony. In addition, ASTT psychologists also help clients deal with the often intense emotional stress that accompanies the process of seeking asylum. ASTT is based in Baltimore and operate satellite offices in Washington, D.C. and Wheaton, MD.

Catholic Charities Immigration Legal Services was established in 1986 to provide professional immigration legal services to low-income, foreign-born individuals residing in the Washington, DC metropolitan area. A multi-lingual staff of attorneys and BIA-accredited representatives provides thousands of direct legal services on a variety of immigration matters each year, including asylum. Last year, Catholic Charities assisted 78 individuals with applications for asylum, affirmative and defensive, as well as referring additional individuals to our *pro bono* panel for assistance with their applications.

The **Center for Gender & Refugee Studies** (CGRS) has a direct and serious interest in the development of immigration and refugee law, including the issues under consideration. Founded in 1999 at the University of California, Hastings College of the Law, CGRS is the nation's leading organization supporting women asylum-seekers fleeing gender related harm, at both the practice and policy levels. Through its scholarship, expert consultations, advocacy, and appellate litigation, CGRS has played a central role in the development of refugee law and policy on a wide range of issues. Judicial review of

the one year bar – the central issue under consideration – implicates a matter of great consequence to CGRS. The Center has analyzed the impact of the one year bar in over 200 asylum cases and has published a journal article on the implementation of the bar.

The **Cornell University Law School Immigration Appellate Law and Advocacy Clinic** is one of the only law school clinics in the country that focuses exclusively on appellate immigration cases. Under the supervision of the Clinic Directors, law students represent immigrants fleeing persecution in their appeals before the Board of Immigration Appeals (BIA) and federal counts. Since the clinic's founding in 2003, approximately fifty law school students have worked on twenty-five cases. The Clinic has won nearly half the cases it has taken, which is a far greater rate of victory than most appeals before the BIA and the federal courts.

The **Harvard Immigration and Refugee Clinical Program** (HIRC) has worked with hundreds of immigrants and refugees since its founding in 1984. It combines representation of individual applicants for asylum and related relief with the development of theories and policy relating to asylum law. The U.S. Department of Justice and the Department of Homeland Security have engaged the HIRC in the training of immigration judges, asylum officers, and supervisors on issues related to asylum law. The HIRC published the first major treatise on U.S. asylum law, *Law of Asylum in the United States*. In addition, the HIRC provides advice, support, and supplemental services to advocates

around the United States. The HIRC has an interest in the proper application and development of U.S. asylum law, so that claims for asylum protection receive fair and proper consideration under existing standards of law. The HIRC regard the one-year filing deadline issue in this case as especially important, since it affects many of the clients the clinic represents.

The **Harvard Immigration and Refugee Clinic at Greater Boston Legal Services Greater Boston Legal Services** (GBLS) is New England's largest legal services organization. The Harvard Immigration and Refugee Clinic is a clinic based at Harvard Law School and at GBLS. The Women Refugees Project of the Harvard Law School Immigration and Refugee Clinical Program and Greater Boston Legal Services has worked with hundreds of women from around the world since its founding in 1992. It combines representation of individual women asylum applicants with the development of theories, policy and national advocacy. GBLS frequently works with clients who face one-year filing deadline issues, and has an interest in the proper application and development of U.S. asylum law so that claims for asylum protection receive fair and proper consideration under existing standards of law.

Since its founding in 1881, the central mission of the **Hebrew Immigrant Aid Society** (HIAS) has been to rescue Jews and others fleeing persecution and to assist them to start their lives anew in peace and security in the United States and elsewhere. In

fulfillment of this mission, HIAS maintained staff at Ellis Island to assist individuals through the immigration process, including representation in exclusion proceedings. More recently, HIAS attorneys and accredited representatives have provided legal representation to asylum seekers in Immigration Courts in the New York area, including at immigration detention facilities. HIAS has successfully represented numerous asylum seekers throughout the appellate process, up to and including the Federal Courts of Appeal. Through this experience HIAS has learned that there are many sound reasons – permitted within Congress' exceptions to the one-year deadline for applicants to apply for asylum after arriving in the United States – as to why individuals who would face persecution in their home country do not apply for asylum during their first year in the U.S. HIAS also understands how – in this and other aspects of pursuing asylum claims – it can take several layers of review before adjudicator error on this issue is effectively addressed. Therefore, HIAS believes it is crucial that individuals fleeing persecution have the opportunity for judicial oversight of exceptions to the one-year deadline to file for asylum.

Human Rights First has worked since 1978 to protect and promote fundamental human rights. Human Rights First grounds its refugee protection work in the standards set forth in the 1951 Refugee Convention, its 1967 Protocol, and other international human rights instruments, and advocates adherence to these standards in U.S. law and policy. Human Rights First (previously known as the Lawyers Committee for Human Rights) also

operates one of the largest *pro bono* asylum legal representation programs in the country, providing free legal representation to indigent refugees in partnership with volunteer attorneys at law firms. Many of these refugee clients have been affected by the asylum filing deadline.

In the **Immigrant Rights Clinic at the University of Baltimore School of Law** students, under the supervision of faculty, represent low-income immigrants in Immigration Court, in Maryland District Court, and before the Department of Homeland Security U.S. Citizenship and Immigration Services. Students' caseloads are diverse, touching on many areas of immigration practice, including asylum law. Clients in the Immigrant Rights Clinic come from all over the world, including Africa, Asia, Europe, and Central and Latin America.

Immigration Equality is a national organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender (LGBT) and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity or HIV-status. Immigration Equality also runs a *pro bono* asylum program and provides technical assistance and advice to hundreds of attorneys nation-wide on sexual orientation, transgender and HIV- based asylum matters. Immigration Equality has provided trainings to asylum officers on asylum cases based on sexual

minority and HIV status and has co-authored the leading manual on preparing sexual orientation-based asylum claims.

The **Immigration Law Clinic of the Rogers College of Law, University of Arizona** provides students with the opportunity to gain hands-on experience with immigration law by providing services to immigrants in Southern Arizona. Its clients include asylum seekers detained in Eloy, Arizona, whom students, under attorney supervision, represent in removal proceedings. The Clinic has represented immigrants from countries including Vietnam, Libya, El Salvador, Guatemala, Cuba, Nepal, Thailand, Iraq, Syria, Cambodia, Laos, Korea, the Sudan, Uganda and Haiti. Students in the Clinic also provide advice and pro se assistance to non-detained respondents in removal proceedings, including asylum seekers. Such assistance, at times, includes completion of asylum applications. The one-year asylum application deadline and the exceptions thereto feature prominently among the issues the Clinic and its clients must confront in preparing and litigating their cases.

Jubilee Campaign USA is a Non Governmental Organization (NGO) that promotes human rights and religious liberties for ethnic and religious minorities throughout the world. Jubilee has been granted Consultative Status by the United Nations (UN) and participates annually in the United Nations Human Rights Caucus Session in Geneva, Switzerland, raising concerns of persecuted religious minorities and others from various parts of the world. Jubilee

undertakes advocacy and representation of refugee cases, particularly those fleeing religious based persecution.

The **Pennsylvania Immigration Resource Center** (PIRC) is a non-profit legal services organization founded in 1996. Located less than a mile from York County Prison, PIRC has become the leading source of legal services to immigrants detained by DHS in Pennsylvania. PIRC focuses on providing services to the most vulnerable immigrants in detention. Through the Detained Torture Survivors Project, PIRC provides direct legal assistance to detained torture survivors appearing before the Immigration Courts and federal courts of appeal in complex cases involving Convention Against Torture, Asylum, Cancellation of Removal, and Withholding of Removal claims.

Physicians for Human Rights (PHR) was founded in 1986 on the idea that health professionals, with their specialized skills, ethical duties, and credible voices, are uniquely positioned to investigate the health consequences of human rights violations and work to stop them. PHR mobilizes health professionals to advance health, dignity, and justice and promotes the right to health for all. The members of PHR's Asylum Network assist asylum seekers by conducting mental and physical evaluations to document the forensic evidence of abuse. Our clinicians also use their expertise to educate their colleagues and to inform public policy affecting refugees and asylum seekers. PHR is headquartered in Cambridge, Massachusetts, and maintains an

office in Washington, DC. It is a non-profit, non-sectarian organization funded through private foundations and by individual donors.

Public Counsel is the largest *pro bono* public interest law firm in the world. Founded in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to the most vulnerable members of our community. The Immigrants' Rights Project (IPR) provides legal representation to individuals seeking asylum in the United States based on past persecution or a well-founded fear of future persecution on account of political opinion, race, religion, nationality, or membership in a particular social group. IRP represents clients from all over the world for whom the U.S. is the last place of refuge and where return to their home country may mean death or torture. Depending on the procedural posture of a case, asylum applicants are provided representation in administrative trials before Immigration Judges, on appeal before the Board of Immigration Appeals, and before the U.S. Court of Appeals for the Ninth Circuit. In some cases, representation is provided in non-adversarial proceedings before the Department of Homeland Security.

Located in Falls Church, VA, and Houston, TX, the **Tahirih Justice Center** (Tahirih) is a non-profit organization offering free legal services to women and girls fleeing violent human rights abuses such as female genital mutilation, torture, rape, human trafficking, honor crimes, forced marriage, and

domestic violence. Since 1997, through direct services and referrals, Tahirih has assisted almost 10,000 women and children. Tahirih has represented clients in more than ninety gender-based asylum cases before the U.S. Citizenship and Immigration Services (USCIS) Asylum Office, the U.S. Immigration Courts of Arlington and Baltimore, the Board of Immigration Appeals (Board) and the U.S. Courts of Appeals. Building on the landmark case *Matter of Kasinga*, Tahirih is at the forefront of organizations using the refugee definition and the asylum process to protect women and girls fleeing gender-based persecution. In addition to direct services, Tahirih also engages in national public policy advocacy, working to pass laws, develop regulations, transform policies, and establish precedent so that systemic change will ensure the long-term protection of women and girls from violence. Many of Tahirih's asylum clients have been adversely impacted by the one-year filing deadline.

Additionally, the following law professors have joined as *amici* in their individual capacities as educators, clinical directors, researchers, authors and experts in asylum law and policy:

Deborah Anker
Clinical Professor of Law; Director, Harvard Immigration and Refugee Clinical Program
Harvard Law School*

Stacy Caplow
Professor of Law; Director, Clinical Education Program

Brooklyn Law School*

Michael J. Churgin
Raybourne Thompson Centennial Professor
University of Texas School of Law*

Alice Clapman
Clinical Teaching Fellow, Center for Applied Legal Studies
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Regina Germain
Adjunct Professor of Law
University of Denver, Sturm College of Law*

Denise Gilman
Clinical Professor of Law, Immigration Clinic
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Dina Francesca Haynes
Associate Professor of Law; Director, Immigration Project
New England Law*

Harvey Kaplan
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Northeastern School of Law*

Nancy Kelly
Clinical Instructor; Co-Managing Director, Harvard Immigration and Refugee Clinic at Greater Boston Legal Services
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Beth Lyon
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Nancy Morawetz
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Hiroshi Motomura
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Rachel E. Rosenbloom
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Philip G. Schrag
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